## STATE v. CAPT. WONG CHEE WAI

**[Mil. C.A. (F.A. Chua, (President), Goh Heng Leong, Tan Kok Quan, Lee Seng Kong & Lt. Col. Loh Kum Kim) July 22, 1985]**

**[Singapore – Military Court of Appeal No. 3 of 1985]**

*Military Law – AWOL – Aggressive behaviour – Hurling abuses – Failure to apprehend person subject to military law – Neglect to the prejudice of good order – Appeal against conviction and sentence – Singapore Armed Forces Act, 1972, ss. 21, 22, 23(b) & 24.*

The appellant Capt. Wong was found guilty and convicted by General Court Martial on two charges, *i.e.*, one for failure to apprehend a person contrary to section 23(b) of the Singapore Armed Forces Act, 1972, and another for neglect to the prejudice of good order contrary to section 24 of the Act. He was fined $800 on each charge. The case arose when one Pte. Sim under the command of the appellant refused to do guard duty on October 7, 1984. The appellant put him under open arrest. Pte. Sim went AWOL. Two days later Pte. Sim, his brother and two friends entered the Camp to see the appellant. They were not denied entry. They did not even book in. When told that the appellant refused to drop the AWOL charge against Pte. Sim, the latter rushed into the appellant's office and shouted at him in vulgar language. Pte. Sim's brother also scolded the appellant with obscenities before leaving the Camp. The appellant did not do anything. Pte. Sim, his brother and two friends then left the Camp unhindered.

**Held**, dismissing the appeal: (1) it is clear that Pte. Sim and his brother had committed criminal trespass. The Sims had behaved aggressively and had hurled abuses at the appellant. Notwithstanding the absence of standing orders, it was the duty of the appellant to call the military Police from the guard room to arrest the Sims;

(2) having regard to all the circumstances of the case the neglect of the appellant was blameworthy as to be deserving of punishment;

(3) it cannot be right that anybody could enter SAF installations, abuse the officers and leave with no action needed to be taken against them by the officers;

(4) the sentences imposed by the trial Court were not manifestly excessive or inappropriate.

MILITARY COURT OF APPEAL.

*P.O. Ram* for the State.
*Peter Low* for the appellant.

*Cur. Adv. Vult.*

**F.A. Chua, President** (delivering the Judgment of the Military Court of Appeal): Capt. Wong Chee Wai of 1 SIR (appellant) was found guilty and convicted by General Court Martial on the following charges:

"*1st Charge*

FAILURE TO APPREHEND A PERSON SUBJECT TO MILITARY LAW WHO WAS ON ABSENCE WITHOUT LEAVE FROM SERVICE CONTRARY TO SECTION 23(b) OF THE SAF ACT, 1972,

in that he,

at 1 SIR Guillemard Camp, Singapore, on Oct 9, 84 at or about 1630 hours failed to take any steps within his powers to cause 1686165J PTE SIM KIANG MONG whom he knew to be on absence without leave from service to be apprehended.

*2nd Charge*

NEGLECT TO THE PREJUDICE OF GOOD ORDER CONTRARY TO SECTION 24 OF THE SAF ACT, 1972,

in that he,

at 1 SIR Guillemard Camp, Singapore, on Oct 9, 84 at or about 1630 hours neglected to report to the Unit guard room that one civilian 1474325A SIM KIANG WEE and 1686165J PTE SIM KIANG MONG who had come to see him on official business were behaving aggressively and hurling abuses at him in his office."

He was ordered to pay a fine of $800.00 on each of the Charges.

The appellant appealed against his conviction and sentence. After hearing the appeal the Court dismissed the appeal. We now give our reasons.

Pte. Sim Kiang Mong was a Serviceman of "A" Coy 1 SIR, and the appellant was his OC. On October 7, 1984, Pte. Sim was asked to do guard duty. He refused and the Appellant put him under open arrest. That day at about 2 p.m. Pte. Sim went AWOL. He climbed over the back gate and ran out of the Camp. When the appellant was informed of this he instructed his CSM to submit an AWOL report immediately.

The short facts as found by the trial Court were these. On October 9, 1984, at around 1615 hours Pte. Sim, his brother Sim Kiang Wee (a civilian) and two friends entered 1 SIR, Guillemard Camp. They wanted to see the Appellant. They were not in any way denied entry. They did not even book in. At "A" Coy lines, Sim Kiang Wee went in to see the appellant in order to persuade him to cancel the AWOL Charge against Pte. Sim. Subsequently Sim Kiang Wee came out of the Appellant's office and told his brother and the others that the charges would not be dropped. Pte. Sim then rushed into the Appellant's office and shouted at him in vulgar language. As he was also very violent the rest of the group grabbed him and pulled him out. Later the party left the Company lines. But before leaving

Sim Kiang Wee scolded the appellant with obscenities. The appellant did not do anything. The party then left the Camp unhindered.

As regards the first charge the main ground of appeal was that under section 23(b) of the Singapore Armed Forces Act, 1972, (the Act) the appellant had a discretion whether or not to have Pte. Sim apprehended.

Section 23(b) reads:

"Every person subject to military law who, knowing that any other person has committed an offence under section 21 or 22 of this Act, –

(a) ...

(b) fails to take any steps within his power to cause that person to be apprehended,

shall be guilty of an offence and shall be liable on conviction by a subordinate military court to imprisonment for a term not exceeding two years or any less punishment authorised by this Act."

The argument of counsel for the appellant was this. Section 23(b) does not create an absolute offence and that the absence of *mens rea* is a defence. It was argued that the belief, intent or state of mind of the appellant was material and relevant. The appellant had given his reasons why he did not take any steps to cause Pte. Sim to be apprehended that night. It was submitted that the trial Court should have accepted the reasons given by the appellant and found that the appellant had exercised his discretion correctly.

It was further argued that if section 23(b) created an absolute offence it is repugnant to sections 156(1), 158(a), 161(2) of the Act which all gave discretionary powers of arrest and that these sections prevailed over section 23(b).

We were unable to accept these arguments. It is clear that section 23 is not repugnant to sections 156(1), 158(a) or 161(2) of the Act.

The facts were that the appellant knew that Pte. Sim had committed an offence under section 21 of the Act (absence without leave from Service) and under section 23(b) he was under a duty to take steps within his power to cause Pte. Sim to be apprehended. He had no discretion in the matter. He had failed to have Pte. Sim apprehended that night and he was rightly convicted.

We agree with the trial court that even if the appellant had discretion he had not exercised it correctly.

As regards the second charge it was submitted (1) that the trial Court erred in arriving at the findings of fact which it did; (2) that the prosecution had failed to prove that there was a duty imposed on the appellant to report to the Guard Room the conduct of Pte. Sim and his brother; (3) that the trial Court erred in finding that that omission to report was culpable.

The Appellant in his defence said in evidence:

"I did not report to the guard room the conduct of Pte Sim and his brother because in the first place, I do not see any necessity – if an arrest is required, I can get my own officers and NCOs in my company line to effect the arrest. Secondly – there was no damage done to any property of the SAF – the civilian, Mr. Sim had not committed any crime. It was expected that he would be frustrated with me for not acceding to his request – if I need to evict them, I will get my own men rather than reporting to the guardroom. There are no standing orders regarding when to report to the guardroom. As a ground commander for many years, I believe that only when camp security is threatened would there be a need to report to the guardroom. In this particular instance, none of the civilians or visitors were armed – their intentions were to get me to cover up Pte. Sim's charges. It is clear that they did not intend to cause mischief in the camp.

If I see Mr. Sim commit any crime or offence, it would be my duty and responsibility to arrest him immediately.

Court: So you think that using abusive and threatening words is not an offence.

Witness: I regard those words as words of frustrations, not intention.

As long as Sim Kiang Wee is within my company premises, he is under my responsibility."

We were of the view that there was no substance in any of the submissions made on behalf of the appellant.

The evidence was clear and the trial Court had sufficient evidence on which to arrive at the findings of fact which they did.

We are here concerned with the general duty of the appellant, an officer in the Singapore Armed Forces, in a military camp.

It is clear that Pte. Sim and his brother had committed criminal trespass, an offence under section 441 of the Penal Code. The Sims had behaved aggressively and had hurled abuses at the appellant. Notwithstanding the absence of

standing orders it was the duty of the appellant to call the Military Police from the guard room to arrest the Sims. But what did he do? Immediately after these people had left his office he went for volleyball practice.

Neglect to be punishable under section 24 must be blameworthy and deserving of punishment. In this case it was the appellant's duty to have the Sims arrested. The surrounding circumstances in this case did not excuse his failure. Having regard to all the circumstances of the case the neglect of the appellant was blameworthy as to be deserving of punishment.

We agree with the trial Court that it cannot be right that anybody could enter SAF installations, abuse the officers and leave with no action needed to be taken against them by the officers.

We were of the view that, in all the circumstances of the case, the sentences imposed by the trial court on the appellant were not manifestly excessive or inappropriate.

For these reasons we dismissed the appeal.

*Appeal dismissed.*

---

A MALAYSIAN REPORTS

## PUBLIC PROSECUTOR v. RAJAPPAN

**[S.C. (Salleh Abas L.P., Abdul Hamid C.J. (Malaya), Seah, Hashim Yeop A. Sani & Abdoolcader S.C. JJ.) July 4, 1985]**

**[Kuala Lumpur – Supreme Court Criminal Reference No. 2 of 1985]**

*Criminal Law and Procedure – Jurisdiction of magistrate's Court – Whether offence of bigamy committed outside Malaysia can be tried in Malaysia – Penal Code, ss. 3, 4 & 494 – Law Reform (Marriage and Divorce) Act, 1976, ss. 3, 5 & 7 – Subordinate Courts Act, 1948, ss. 59 & 76 – Courts of Judicature Act, 1964, s.22 – Extra-Territorial Offences Act, 1976 – Criminal Procedure Code (F.M.S. Cap. 6), ss. 9 & 127.*

*Penal Code, ss. 3, 4 & 494 – Bigamy – Whether bigamous marriage committed abroad can be tried in Malaysia.*

In this case the respondent was married according to Hindu Custom in India in 1947 to the complainant, Pelaniyammal. In 1954 the respondent, complainant and their children migrated to Malaysia. Their marriage was subsequently registered with the Registrar of Marriages, Malaysia. In March 1984 the respondent married one Saraswathi in India and brought her back to Malaysia. The respondent was charged in the Magistrate's Court in Klang for an offence under section 494 of the Penal Code. The learned magistrate refused to hear the case on the ground that he had no jurisdiction to do so. The Public Prosecutor thereupon applied to the High Court under section 127(c) of the Criminal Procedure Code to determine whether the Magistrate's Court had jurisdiction to hear and try the case. The learned Judge of the High Court held that the courts in Malaysia have no jurisdiction to try proceedings for bigamy committed outside the limits of Malaysia. He also held that it is not an offence if the second marriage takes place outside Malaysia – see [1985] 2 M.L.J. 231.

The Public Prosecutor referred the following questions for the determination of the Supreme Court –

(a) whether or not in law a person who is domiciled in Malaysia and marries again during the lifetime of his or her husband or wife at a place outside Malaysia and thereafter returns to Malaysia with the second spouse has committed an offence punishable under section 494 of the Penal Code (F.M.S. Cap. 45); and

(b) if the answer to question (a) is in the affirmative, then whether or not in law a Magistrate's Court has jurisdiction to try such person for an offence punishable under section 494 of the Penal Code (F.M.S. Cap. 45).

**Held**: (1) a bigamous marriage committed abroad by a Malaysian citizen or a permanent resident, notwithstanding such marriage is in contravention of section 5(1) of the Law Reform (Marriage and Divorce) Act 1976, is not an offence punishable under section 494 of the Penal Code. Section 7 of the Law Reform (Marriage and Divorce) Act, 1976 does not make the offence under section 494 of the Penal Code an extra-territorial offence. The offence under